

Message Text

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O R 021425Z AUG 77
FM USMISSION USBERLIN
TO AMEMBASSY BONN IMMEDIATE
INFO SECSTATE WASHDC IMMEDIATE 5010
AMEMBASSY LONDON
AMEMBASSY MOSCOW
AMEMBASSY PARIS
USMISSION NATO
AMEMBASSY BERLIN

C O N F I D E N T I A L SECTION 1 OF 4 USBERLIN 2006

E.O. 11652: GDS
TAGS: PGOV, BQG, AKB
SUBJECT: TRIAL OF LORENZ-DRENCKMANN TERRORISTS IN BERLIN;
ROLE OF FRG FEDERAL PROSECUTOR

REF: (A) BONN 12504, (B) USBERLIN 1978, (C) STATE 177700,
(D) BONN 12441, (E) BONN 12426, (F) 76 STATE 166421,
(G) 76 BONN 12111

SUMMARY: US MISSION HAS RECEIVED LETTERS ADDRESSED
TO GENERAL MCDONOUGH, US COMMANDANT, BERLIN BY
DEFENSE COUNSEL, BECKER AND SPANGENBERG, FOR TWO OF
THE 2 JUNE MOVEMENT DEFENDANTS. LETTERS WHICH
ARE IN SUBSTANCE IDENTICAL, ARGUE THAT INDICTMENT
OF DEFENDANTS BY FEDERAL PROSECUTOR IS VIOLATION
OF QA IN THAT SUCH ACTION CONSTITUTES DIRECT FRG
GOVERNMENTAL AUTHORITY OVER BERLIN AND VIOLATES
1A PROVISIONS THAT BERLIN IS NOT A PART OF THE FRG
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AND NOT TO BE GOVERNED BY IT. SUCH ARGUMENTATION
IS CUSTOMARY SOVIET LINE. OF INTEREST, DEFENSE
COUNSEL SUGGEST THAT FEDERAL PROSECUTOR'S ACTIONS
MERIT INVOCATION OF PARA 4 OF THE FINAL QUADRIPARTITE
PROTOCOL OF 3 JUNE 1972. PARA 4 PROVIDES FOR THE
INSTITUTION OF FOUR POWER CONSULTATIONS IN THE EVENT
OF A DIFFICULTY IN THE APPLICATION OF THE QA. USBER

RECOMMENDS THAT WE RESPOND TO THE TWO LETTERS SAYING ESSENTIALLY NO MORE THAN THAT THE ACTIONS OF THE FEDERAL PROSECUTOR ARE IN ACCORD WITH THE PROVISIONS OF THE QA. END SUMMARY.

1. BELOW FOLLOWS INFORMAL MISSION TRANSLATION OF LETTERS FROM NICOLAS BECKER AND HENNING SPANGENBERG TO US COMMANDANT. LETTERS, DATED 28 JULY, ARE IDENTICAL EXCEPT THAT BECKER WRITES ON BEHALF OF HIS CLIENT, ANDREAS-THOMAS VOGEL AND SPANGENBERG WRITES ON BEHALF OF HIS CLIENT, FRITZ TEUFEL. COPIES OF ORIGINALS WILL BE POUCHED TO BONN.

BEGIN TEXT: TO: US CITY COMMANDANT IN BERLIN
MR. MC DONOUGH
U.S. MISSION
CLAYALLE 170
1000 BERLIN 33

DEAR GENERAL:

IN THE NAME OF AND AS THE LEGAL REPRESENTATIVE OF MY CLIENT, ANDREAS-THOMAS VOGEL, (FRITZ TEUFEL), PRESENTLY A PRISONER AWAITING TRIAL AT 12A ALT MOABIT, 1000 BERLIN 21, I WOULD LIKE TO BRING THE FOLLOWING TO YOUR ATTENTION:
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AMONG OTHER OFFENSES, MY CLIENT IS ACCUSED OF HAVING PARTICIPATED IN THE FALL OF 1974 IN THE KILLING OF HERR VON DRENCKMANN, PRESIDENT OF THE WEST BERLIN KAMMERGERICHT, OF HAVING KIDNAPPED IN THE SPRING OF 1975 PETER LORENZ, WEST BERLIN CDU POLITICIAN, AND IN ORDER TO ACHIEVE LORENZ' LIBERATION, OF HAVING FORCED THE RELEASE OF SIX PRISONERS OR REMAND PRISONERS, RESPECTIVELY, FROM FRG AND WEST BERLIN PRISONS AND OF HAVING EXTORTED THE PAYMENT OF A RANSOM.

THE INVESTIGATION PROCEEDINGS AGAINST MY CLIENT WERE CONDUCTED BY THE PROSECUTING AUTHORITY AT THE WEST BERLIN LANDGERICHT UNTIL AUGUST 1976. ON 16 AUGUST 1976, THE FEDERAL PROSECUTOR AT THE FEDERAL COURT IN KARLSRUHE REQUESTED THAT THE INVESTIGATION PROCEEDINGS BE TURNED OVER TO HIS OFFICE.

ON 26 JULY 1977, THE FEDERAL PROSECUTOR INDICTED MY CLIENT BEFORE THE WEST BERLIN KAMMERGERICHT FOR MURDER, MEMBERSHIP IN A CRIMINAL ORGANIZATION,

COERCION OF CONSTITUTIONAL ORGANS, AND FOR OTHER
CRIMINAL OFFENSES.

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IO-13 DHA-02 TRSE-00 /069 W
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TO AMEMBASSY BONN IMMEDIATE
INFO SECSTATE WASHDC IMMEDIATE 5011
AMEMBASSY LONDON
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THE PROCEEDINGS ARE NOW PENDING AT THE KAMMERGERICHT
UNDER FULE NO. (1) STE 2/77 (130/77).
ACCORDING TO INFORMATION OBTAINED, THE INDICTMENT
WAS SIGNED BY FEDERAL ATTORNEY FELIX KAUL, THE CHIEF
OF THE DEPARTMENT FOR FIGHTING TERRORISM AT THE
FEDERAL PROSECUTOR'S OFFICE IN KARLSRUHE. ON 26
JULY 1977, AT A PRESS CONFERENCE IN KARLSRUHE
DR. KURT REBMANN, THE FEDERAL PROSECUTOR, ANNOUNCED
THAT THE INDICTMENT HAD BEEN BROUGHT IN. ON THIS
OCCASION, HE STATED THAT THE INDICTMENT HAD BEEN
SIGNED BY FELIX KAUL, FEDERAL ATTORNEY, SOLELY
FOR ADMINISTRATIVE AND PRACTICAL REASONS. FROM PRESS
RELEASES BY JUDICIAL CIRCLES IN KARLSRUHE, IT COULD
ALSO BE GATHERED THAT IT IS PLANNED TO HAVE THE
PROSECUTION REPRESENTED IN THE TRIAL BY FEDERAL
ATTORNEYS WHO COMMONLY PERFORM DUTY AT THE APPELLATE
COURT OF THE 5TH PENAL SENAT OF THE FEDERAL COURT
IN BERLIN.
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I AM OF THE OPINION THAT THE PRESENTATION OF THE INDICTMENT BY THE FEDERAL PROSECUTOR BEFORE A WEST BERLIN COURT AND HIS INTENTION TO HAVE THE PROSECUTION IN THE TRAIL REPRESENTED BY OFFICIALS OF HIS OFFICE CONSTITUTE A VIOLATION OF THE TREATIES AND AGREEMENTS CONCLUDED REGARDING THE STATUS OF WEST BERLIN BY THE GOVERNMENTS OF THE UNION OF SOCIALIST SOVIET REPUBLICS, THE FRENCH REPUBLIC, THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, AND THE UNITED STATES OF AMERICA.

IN THE QUADRIPARTITE AGREEMENT OF 3 SEPTEMBER 1971 WHICH ONCE MORE CONFIRMS THE VALIDITY OF THE LONDON PROTOCOL OF 12 SEPTEMBER 1944 WITH ITS AMENDING PROTOCOLS, THE PROCLAMATION OF 5 JUNE 1945 ON THE SEIZURE OF THE SUPREME GOVERNMENTAL POWER IN GERMANY AND OVER THE OCCUPATION ZONES IN GERMANY, THE LONDON AGREEMENT OF 14 NOVEMBER 1944 ON THE CONTROL INSTITUTIONS IN GERMANY IN THE VERSION OF 1 MAY 1945, AND THE DECLARATION OF 5 JUNE 1945 ON CONTROL PROCEDURES IN GERMANY, IT IS LAID DOWN, REGARDLESS OF THE VARYING LEGAL CONCEPTS OF THE CONTRACTING GOVERNMENTS, THAT THE WESTERN SECTORS OF BERLIN ARE NOT A PART OF AND MAY NOT BE GOVERNED BY THE FEDERAL REPUBLIC OF GERMANY. THIS HAS BEEN EXPRESSLY CONFIRMED BY THE GOVERNMENTS OF THE FRENCH REPUBLIC, THE UNITED KINGDOM, AND THE UNITED STATES OF AMERICA, IN PART II B OF THE QUADRIPARTITE AGREEMENT, AND IN ANNEX II TO THIS AGREEMENT, THIS HAS ONCE MORE BEEN INTERPRETED PURSUANT TO THE VIEWS OF SAID GOVERNMENTS. THE GOVERNMENT OF THE USSR HAS TAKEN COGNIZANCE OF THESE DECLARATIONS AND INTERPRETATIONS BY MAINTAINING AT THE SAME TIME ITS CONFIDENTIAL

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OWN, FURTHER REACHING LEGAL CONCEPT.

HOWEVER, REGARDLESS OF THE LEGAL CONCEPT WHICH ONE IS FOLLOWING IN PARTICULAR IT HAS TO BE NOTED THAT THE PRESENTATION OF THE INDICTMENT BY THE FEDERAL PROSECUTOR BEFORE A WEST BERLIN COURT IS A VIOLATION OF THE ABOVE-MENTIONED AGREEMENTS, PARTICULARLY OF THE STATEMENT THAT BERLIN MAY NOT BE GOVERNED BY THE FEDERAL REPUBLIC.

PURSUANT TO PARA 142A OF THE LAW ON THE CONSTITUTION OF COURTS, THE FEDERAL PROSECUTOR IS THE SUPREME

PROSECUTING AUTHORITY OF THE FEDERAL REPUBLIC OF GERMANY. HE HAS HIS SEAT OF OFFICE AT THE FEDERAL COURT IN KARLSRUHE. HE IS DIRECTLY SUBORDINATE TO INSTRUCTIONS FROM THE FEDERAL MINISTER FOR JUSTICE OF THE FRG. THE APPOINTMENT OF THE FEDERAL PROSECUTOR MUST BE APPROVED BY THE BUNDESRAT. WHENEVER HE HIMSELF BECOMES ACTIVE AS INVESTIGATING AUTHORITY, HIS WORK IS CLOSELY CONNECTED WITH THE ACTIVITIES OF THE FEDERAL CRIMINAL OFFICE, WHICH IS SUBORDINATED TO THE FEDERAL MINISTRY OF THE INTERIOR, AND WITH THE SECRET SERVICES OF THE FEDERAL REPUBLIC. PROCEEDINGS LIKE THE ONE IN QUESTION CAN BE TAKEN OVER AND THE INDICTMENT CAN BE PRESENTED BY THE FEDERAL PROSECUTOR, PURSUANT TO PARA 74A AND PARA 142A OF THE COURTS' CONSTITUTIONAL LAW, BECAUSE OF THEIR SPECIAL IMPORTANCE AND WHENEVER A CRIME INTERFERES WITH THE INTERESTS OF THE FEDERAL REPUBLIC TO A HIGH DEGREE.

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THEREFORE, THE BRINGING IN OF THE INDICTMENT BY THE FEDERAL PROSECUTOR AND THE REPRESENTING OF THE PROSECUTION IN THE TRIAL BY THE FEDERAL PROSECUTOR MUST BE REGARDED AS AN EXERCISE OF DIRECT GOVERNMENTAL

POWER BY THE FRG.

THIS APPLIES ALL THE MORE AS THE FEDERAL PROSECUTOR, AMONG OTHER OFFENSES, ACCUSES MY CLINET OF HAVING EXTORTED THE GOVERNMENT OF THE FRG, A VIOLATION OF PARA 105 OF THE PENAL CODE. THIS IS EXPLICITLY A POLITICAL OFFENSE WHICH IS DIRECTED AGAINST FREE DETERMINATION OF WILL FO THE GOVERNMENT OF THE FRG. THE FACT THAT THIS PRESENTATION OF THE INDICTMENT AND THE PLANNED REPRESENTATION OF THE PROSECUTION IN BERLIN BY THE FEDERAL PROSECUTOR CONSITUTE AN EXCERCISE OF GOVERNMENTAL FUNTIONS OF THE FRG, CANNOT BE CHANGED BY THE SIGNING OF THE INDICTMENT BY THE CHIEF
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OF THE DEPARTMENT FOR FIGHTING TERRORISM AT THE FEDERAL PROSECUTOR'S OFFICE NOR BY THE INTENTION TO HAVE THE PROSECUTION IN BERLIN REPRESENTED BY TWO FEDERAL ATTORNEYS OF THE BRANCHOFFICE OF THE FEDERAL PROSECUTOR AT THE 5TH PEANL SENAT OF THE FEDERAL COURT IN BERLIN. ON THE ONE HAND DR. REBMANN, THE FEDERAL PROSECUOTR, EXPRESSLY EMPHASIZED THAT THE SIGNING OF THE INDICTMENT WAS SOLELY MOTIVATED BY INTERNAL, ADMINISTRATIVE REASONS OF HIS OFFICE. THE APPEARANCE OF FEDERAL ATTORNEYS OF THE BRANCH OFFICE OF THE FEDERAL PROSECUTOR AT THE 5TH PENAL SENAT OF THE FEDERAL COURT AS PROSECUTORS IN PROCEEDINGS BEFORE THE KAMMERGERICHT IS, HOWEVER, ON THE OTHER HAND A DECISIVE CHANGE IN THE HITHERTO FOLLOWED PRACTICE. THE FEDERAL PROSECUTING AUTHORITY IS DIVIDED INTO A INVESTIGATION SECTION AND AN APPELLATE SECTION. THUS FAR, THE BRANCH OFFICE OF THE FEDERAL PROSECUTOR AT THE5TH PENAL SENAT OF THE FEDERAL COURT IN BERLIN WAS EXCLUSIVELY COMPETENT FOR APPEALS AND HAS NEVER BEFORE APPEARED AS AN INVESTIGATING AND PROSECUTING AUTHORITY IN BERLIN. THE PRESENT INTENTION OF THE FEDERAL PROSECUTOR MUST THEREFORE BE CONSIDERED AS AN ATTEMPT TO ENLARGE THE EXISTING BRANCH OFFICE IN BERLIN BY AN INVESTIGATIN DEPARTMENT AND BY A DEPARTMENT REPRESENTING THE PROSECUTION IN THE TRIAL. THE UNDERSIGNED IS OF THE OPINION THAT THIS, TOO, IS A VIOLATION OF THE QUADRIpartite AGREEMENT OF 3 SEPTEMBER 1971. I THINK THAT THE ABOVE FACTS ARE REASON ENOUGH TO PROCEED PURSUANT TO NUMBERED PARAGRAPH 4 OF THE FOUR PAWER FINAL PROTOCOL OF 3 JUNE 1972 AND TO TAKE STEPS THAT THE KAMMERGERICHT IN BERLIN BE ORDERED NOT TO OPEN THE TRIAL IN BERLIN AND NOT TO ADMIT THE PRESENTATION OF THE INDICTMENT BY THE FEDERAL PROSECUTOR TO TRIAL.
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CONCLUDING MY LETTER I WOULD LIKE TO INFORM YOU THAT
THE SAME LETTER HAS BEEN SENT TO THE BRITISH AND THE
FRENCH MILITARY GOVERNMENTS AND TO THE EMBASSY OF THE
UNION OF SOCIALIST SOVIET REPUBLICS.

SINCERELY YOURS,
NICOLAS BECKER
(HENNING SPANGENBERG)
ATTORNEY END TEXT.

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2. USBER RECOMMENDS THAT WE ANSWER LETTERS AS SOON
AS POSSIBLE. WE HAVE HEARD THAT THE BRITISH AND
FRENCH HAVE ALSO RECEIVED THESE LETTERS. WE ASSUME
LETTERS ARE IDENTICAL. WE BELIEVE THAT ANSWERS
TO LETTERS SHOULD BE THE SAME FOR ALL THREE MISSIONS.
SINCE COUNSEL HAVE ADDRESSED THIS ARGUMENT TO US,
WE ASSUME THEY WILL ALSO, AT SOME LATER DATE, RAISE
ISSUE FORMALLY IN THE TRIAL. UNDER SUCH CIRCUMSTANCES
THE COURT, IF IS TO TREAT THE DEFENSE COUNSELS'
ARGUMENT, WOULD HAVE TO REFER THE QUESTION TO THE

ALLIED KOMMANDATURA. THE ANSWER WE GIVE TO DEFENSE COUNSEL SHOULD ANTICIPATE THE ANSWER WHICH WE MAY HAVE TO GIVE THE BERLIN COURT. IN LINE WITH THIS CONSIDERATION, USBERL RECOMMENDS THE FOLLOWING TEXT FOR ANSWERING THE LETTERS IN QUESTION. OUR RESPONSE WOULD BE SIGNED BY US COMMANDANT. FRENCH AND BRITISH RES-
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PONSES WOULD BE SIGNED BY THEIR RESPECTIVE COMMANDANTS. WE HAVE NOT ATTEMPTED TO COORDINATE TEXTS WITH BRITISH AND FRENCH, WHICH WE ASSUME WILL BE DONE BY BONN GROUP. BEGIN TEXT

DEAR (MR. SPANGENBERG) (BR. BECKER):

I ACKNOWLEDGE RECEIPT OF YOUR LETTER DATED JULY 28, 1977 CONCERNING THE INDICTMENT OF YOUR CLIENT, (FRITZ TEUFEL) (ANDREAS-THOMAS VOGEL), BEFORE THE WEST BERLIN KAMMERGERICHT.

I HAVE NOTED YOUR ARGUMENTATION CONCERNING THE PRESENTATION OF THE INDICTMENT IN BERLIN BY THE FEDERAL PROSECUTOR'S OFFICE. PLEASE BE ADVISED THAT THE FEDERAL PROSECUTOR HAS TAKEN OVER THE INVESTIGATION AND PROSECUTION IN THIS CASE AS AUTHORIZED BY PROVISIONS OF THE COURTS' CONSTITUTIONAL LAW WHICH HAVE BEEN EXTENDED TO BERLIN AND THAT HIS ACTIONS ARE IN ACCORDANCE WITH QUADRIPARTITE AGREEMENTS (LOWER CASE Q AND A) AND ARRANGEMENTS CONCERNING BERLIN, INCLUDING THE QUADRIPARTITE AGREEMENT (Q AND A IN CAPS) OF 3 SEPTEMBER 1971. END TEXT.

3. COMMENT: ARGUMENTATION OF BECKER AND SPANGENBERG IS NOT ESPECIALLY NOTEWORTHY. WHILE THEY DO GO TO SOME LENGTHS TO POINT OUT HOW THE SPECIFIC ACTIVITIES OF THE FEDERAL PROSECUTOR'S OFFICE REFLECT THE EXERCISES OF STATE AUTHORITY, THEY BASE THEIR CONCLUSIONS ON INTERPRETATIONS OF THE QA WHICH THE SOVIETS HAVE OFTEN ADVANCED AND WHICH WE HAVE JUST AS OFTEN REJECTED. OF SPECIAL NOTE, HOWEVER, IN THEIR PENULTIMATE PARA, DEFENSE COUNSEL RAISE THE SPECTRE THAT THE ACTIVITIES OF THE FEDERAL PROSECUTOR IN THE LORENZ-
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DRENCKMANN CASES MERIT INSTITUTION OF FOUR POWER CONSULTATIONS AS ENVISAGED IN PARA 4 OF THE FINAL QUADRIPARTITE PROTOCOL OF 3 JUNE 1972.

IN THEIR LAST PARAGRAPH COUNSEL ADVISE US THAT IDENTICAL LETTERS HAVE BEEN SENT TO "THE EMBASSY OF THE USSR," UNDOUBTEDLY IN EAST BERLIN. WE DOUBT THE SOVIETS WILL ACT ON THE SUGGESTION THAT THEY REQUEST THE INSTITUTION OF FOUR POWER CONSULTATIONS. HOWEVER, WE NOTE THAT THE TRIAL MAY LAST BETWEEN ONE AND TWO YEARS; CONSEQUENTLY, THERE IS A GOOD DEAL OF TIME FOR MANY THINGS TO HAPPEN.

4. IF WE WERE TO RECEIVE AN INQUIRY FROM THE COURT, WHETHER ISSUANCE OF THE INDICTMENT VIOLATES THE QA, USBER ANTICIPATES THAT WE WOULD GIVE A VERY BRIEF AND SUCCINCT RESPONSE THAT THE ACTIONS OF THE FEDERAL PROSECUTOR ARE FULLY CONSISTENT WITH THE QA. ANY OTHER APPROACH WOULD DIVERGE FROM OUR NORMAL PRACTICE WHEN RESPONDING TO COURT INQUIRIES CONCERNING ALLIED LAW IN FORCE IN BERLIN (WE ADVISE THEM OR INSTRUCT THEM ON THE STATUS OF THE LAW BUT WE DO NOT EXPLAIN HOW WE ARRIVE AT OUR CONCLUSIONS).
END COMMENT.

5. USCOB CONCURS. GEORGE

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Message Attributes

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Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: TRIALS
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Decaption Date: 01-Jan-1960 12:00:00 am
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 22 May 2009
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
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Drafter: n/a
Enclosure: n/a
Executive Order: GS
Errors: N/A
Expiration:
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From: USBERLIN
Handling Restrictions: n/a
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Original Previous Classification: n/a
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Subject: TRIAL OF LORENZ-DRENCKMANN TERRORISTS IN BERLIN; ROLE OF FRG FEDERAL PROSECUTOR
TAGS: PGOV, BQG, AKB
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Type: TE
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